

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

STATE OF MISSISSIPPI *ex rel. Jim Hood,*
Attorney General

PLAINTIFF

V.

CAUSE NO. 3:08-CV-780-CWR-LRA

ENTERGY MISSISSIPPI, INC., ET AL.

DEFENDANTS

ORDER

Entergy Power and Entergy Corporation seek 28 U.S.C. § 1292(b) certification of the Order denying their jurisdictional defense motions. The familiar § 1292(b) legal standard applies. *See* Docket No. 97 (declining to certify Order denying judgment on the pleadings).

The movants have reframed their arguments in the customary way, alleging that there is a substantial ground for differing opinions, and so on. The heart of their argument is that the more than 50-year old legislative history of an authority (here, Federal Rule of Civil Procedure 12) and “sound policy arguments” are collectively sufficient to override the plain language of that authority.

The argument is unpersuasive. Supreme Court precedent forecloses that order of reasoning; the Advisory Committee Note on Rule 12 undercuts the movants’ position as much as (if not more than) it helps them; and policy arguments actually support consolidation of jurisdictional defense motions, rather than their trickling out over a decade. In addition, the fact that a few courts outside of this circuit have ignored the plain text of the Rule does not establish a substantial ground for differing opinion. *Cf. In re Chinese-Manufactured Drywall Prods. Liab. Litig.*, MDL No. 2047, 2011 WL 2443693, at *3 (E.D. La. June 14, 2011) (“[T]hat settled law might be applied differently is insufficient to show that there is a substantial ground for

difference of opinion.”); *White v. Nix*, 43 F.3d 374, 378 (8th Cir. 1994) (“[S]ubstantial ground for difference of opinion does not exist merely because there is a dearth of cases.”).

Suffice it to say that the undersigned does not see a substantial ground for difference of opinion on a controlling question of law meriting § 1292(b) certification. The motion is denied.

SO ORDERED, this the 8th day of August, 2017.

s/ Carlton W. Reeves
UNITED STATES DISTRICT JUDGE